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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,457	12/31/2003	Hans Van Toor	334498005US2	4983

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EXAMINER

CARR, DEBORAH D

ART UNIT	PAPER NUMBER
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1621

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/750,457

Applicant(s)

TOOR ET AL.

Examiner

Deborah D. Carr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 and 53-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-48, 53-56 and 63-78 is/are allowed.
- 6) ☒ Claim(s) 1-20, 25, 57-62, 79 is/are rejected.
- 7) ☒ Claim(s) 21-24, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 13-15, filed 26 September 2006, with respect to the rejection(s) of claim(s) 1-2, 4-20, 25 under 35 USC §102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Boema (US Pat. 4,696,911) in view of Freed (US. Pat. 2,424,811).

Claim Objections

2. Claims 57-62, 79 are objected to as being drawn to compounds in the context of a product-by-process claim format. The objection is based on the fact that the compounds produced by the process are definite as to their meaning. As such, claims to the compounds can stand-alone. Product-by-process claim language is reserved for situations where the compound cannot be claimed in a definite manner. The instant application does not fall into this category, as the compounds are definite. Further, there is no showing that the process of making imparts new and unobvious properties to the compounds themselves.

Therefore, product-by-process claims 57-62, 79 will be treated as compound claims for the purpose of this examination.

Claim Rejections - 35 USC § 102

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 57-62, 79 rejected under 35 U.S.C. 102(b) as being anticipated by EP-246,366.

EP'366 teaches edible hydrogenated fat compositions derived from marine, animal, and vegetable oils and can be used in the formulation of margarines. See page 3, lines 46 & 49.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20, 25, 57-58 rejected under 35 U.S.C. 103(a) as being unpatentable over Boerma (US Pat.4,696,911) in view of Maskaev et al and EP-246,366,

US'911 teaches a nickel-base catalyst composition prepared in the presence of a process gas and fat component at a temperature of at least about 80°C; which is then contacted with an unsaturated feedstock at a second temperature no greater than 70°C

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producing a hydrogenated feedstock. See col. 2 for parameters that read on dependent claims 2, 4-20, 25, 57-58.

The reference differs from the claims by reciting an upper temperature of 80°C for the preparation of the catalyst. However it would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the temperature of the catalyst preparation. Maskaev et al. discloses a process of hydrogenation utilizing different nickel containing catalyst suspended in oil. As shown on page 436 6th paragraph the preparation of reduced nickel containing catalyst wherein the temperature of at least about 100°C in the presence of a process gas.

Therefore it would have been obvious to one of ordinary skill in the art to modify the process taught by Boerma et al (US'911) by increasing the temperature range in preparing the catalyst because it is conventionally known. Under some circumstances, however, changes such as these may impart patentability to a process if the particular changes claimed produce a new and unexpected result which result is different in kind and not merely in degree from the results of the prior art.

Such ranges are termed "critical" ranges, and the applicant has the burden of proving such criticality. Applicants have not shown such modification results in great improvement and utility over the prior art, it may still not be patentable if the modification was within the capabilities of one skilled in the art. More particularly, where the general conditions of a

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claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Additionally, EP'366 discloses said catalyst can be prepared in a nitrogen atmosphere.

Allowable Subject Matter

7. Claims 28-48, 53-56, 63-78 are allowed.
8. Claims 21-24, 26-27 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637.

The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information

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about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DEBORAH D. CARR
PRIMARY EXAMINER

ddc